

1 the placement of the coverage.

2 A. That is my recollection.

3 Q. Based on your understanding  
4 of insurance coverage -- and I want to  
5 talk a little bit about specifically how  
6 coverage applies in the context of  
7 asbestos personal injury claims -- that's  
8 something that you've dealt with for many  
9 years, right?

10 A. Yes.

11 Q. In fact, you've held  
12 yourself out as an expert capable of  
13 providing expert testimony on those  
14 subject matters, right?

15 A. Correct.

16 Q. What -- explain for me what  
17 your understanding is of how an aggregate  
18 limit applicable to products coverage  
19 would apply in the context of asbestos  
20 personal injury claims.

21 MS. ESAYIAN: Objection to  
22 form, and calls for a legal  
23 conclusion.

24 MR. SCHIAVONI: Outside the

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1 scope of the deposition.

2 MS. DeCRISTOFARO:

3 Objection.

4 A. Well, if a policy has an  
5 aggregate on it, generally speaking, these  
6 policies are annual aggregates and it  
7 represents the maximum amount of money  
8 that a policy must pay in an annual period  
9 for products claims under that policy.

10 Q. I've seen in some of your  
11 prior testimony that you've made  
12 distinctions between products claims and  
13 premises claims. Do you recall that?

14 A. Yes, I do.

15 MS. DeCRISTOFARO:

16 Objection.

17 Q. Can you explain the  
18 difference to your understanding between  
19 products coverage and premises coverage?

20 MR. SCHIAVONI:

21 Objection.

22 MS. DeCRISTOFARO:

23 Objection.

24 A. Generally speaking,



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1 products coverage provides coverage for  
2 claims arising out of the sale or  
3 manufacture of a policyholder's products  
4 and there's some other caveats to that but  
5 basically that's the general idea.  
6 Premises coverage is coverage for  
7 non-products type claims such as slip and  
8 falls or claims arising out of the  
9 operations of a business not  
10 necessarily -- not from their products.

11 Q. Do you recall with  
12 reference to the Royal Indemnity policies  
13 that we've been talking about issued to  
14 the Zonolite Company whether there were  
15 ever any aggregate limits applicable to  
16 bodily injury claims not limited to  
17 products coverage?

18 MR. SCHIAVONI: Objection  
19 to form. No foundation. You've  
20 already elicited from the witness  
21 that some of the policies are  
22 missing so I also object that it's  
23 vague and ambiguous as to what  
24 policies you're talking about.

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1 A. My --

2 MR. SCHIAVONI: Are you  
3 asking the witness to conjure up  
4 what the terms are to missing  
5 policies?

6 MR. KOVACICH: I'm asking  
7 the witness what he recalls about  
8 the coverages in those policies  
9 that he was familiar with from his  
10 work on behalf of W.R. Grace.

11 MR. SCHIAVONI: He can't  
12 testify about policies he didn't  
13 see and he wasn't there when they  
14 were placed so all you can get is  
15 interpretation. It's a best  
16 evidence objection.

17 MR. KOVACICH: You can make  
18 an objection to the form of the  
19 question and the witness can answer  
20 the question.

21 A. My recollection with  
22 respect to the policies that I've seen and  
23 that we had is that there was no aggregate  
24 for bodily injury/operations claims but



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1 there was -- there were aggregates under  
2 the policies for products claims.

3 Q. And there were also  
4 aggregates under the policies for property  
5 damage claims, right?

6 A. There are aggregates under  
7 the policies for products property damage  
8 claims, and I'm looking at this one here  
9 particularly and it says, you know,  
10 aggregate operations. So there was an  
11 aggregate for property damage  
12 operations.

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13 Q. Do you recall whether there  
14 were any deductibles applicable to any of  
15 the coverages in the Royal Indemnity  
16 policies issued to the Zonolite Company?

17 MS. ESAYIAN: Objection to  
18 form.

19 MR. SCHIAVONI: Objection,  
20 no foundation, best evidence, calls  
21 for a legal conclusion.

22 A. To the best of my  
23 recollection, there were no deductibles or  
24 at least if there was an issue about it,

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1 it never surfaced. They had to be very  
2 minor but I don't recall there being any  
3 deductibles under the Royal policies that  
4 I had seen. Again, I'm speaking from  
5 recollection. The policies say what they  
6 say. That's my best recollection.

7 MS. DeCRISTOFARO: Off the  
8 record.

9 (Discussion off the  
10 record.)

11 MR. KRAMER: I have a quick  
12 question. Is this portion of the  
13 transcript or deposition deemed  
14 confidential for any purpose?

15 MS. ESAYIAN: Every portion  
16 is so far unless somebody -- the  
17 agreement at the beginning is  
18 unless somebody takes it out of  
19 that restriction, the whole thing  
20 is confidential.

21 MR. KRAMER: Okay, thank  
22 you.

23 BY MR. KOVACICH:

24 Q. Mr. Posner, you testified



1 earlier that one of the other things that  
2 you did on behalf of Grace for a number of  
3 years was negotiate settlements with  
4 insurance carriers. Do you recall that?

5 A. Yes, I do.

6 Q. Do you recall a settlement  
7 between W.R. Grace and Royal Indemnity?

8 A. Yes, I do.

9 Q. Did you participate in the  
10 negotiation of that settlement?

11 A. Yes, I did.

12 Q. Did you participate in  
13 providing information to Royal Indemnity  
14 in order to justify the demands that W.R.  
15 Grace was making for purposes of  
16 negotiating that settlement?

17 A. Yes, I did.

18 Q. What information do you  
19 recall providing to Royal Indemnity for  
20 that purpose?

21 MR. SCHIAVONI: Objection,  
22 Rule 408.

23 A. I mean, I don't have a  
24 specific recollection but the kinds of

1 information that I would have provided  
2 would have been payment information with  
3 respect to the amount of money that Grace  
4 had expended to defend and settle asbestos  
5 property damage and asbestos personal  
6 injury claims.

7 Q. Do you recall how much  
8 Royal Indemnity paid pursuant to that  
9 settlement?

10 MS. ESAYIAN: Objection.  
11 The settlement is subject to a  
12 confidentiality provision which  
13 applies to -- which neither Grace  
14 nor Royal can violate so he can't  
15 answer that question.

16 MR. KOVACICH: I believe  
17 the settlement agreement has been  
18 produced in these proceedings with  
19 the amount of the settlement  
20 unredacted.

21 MS. ESAYIAN: I'm not aware  
22 of that.

23 MR. COHN: Should we go off  
24 the record a second and discuss



1 this?

2 (Off the record.)

3 BY MR. KOVACICH:

4 Q. Mr. Posner, do you recall  
5 how much Royal paid in the settlement with  
6 W.R. Grace that we were talking to before  
7 the break?

8 MS. ESAYIAN: Just before  
9 you answer that question, I want to  
10 just make it clear on the record  
11 that my understanding is that, on  
12 behalf of W.R. Grace, we don't  
13 object to that question and my  
14 understanding is that for purposes  
15 of this deposition which is  
16 protected by the confidentiality  
17 order, Royal does not object to the  
18 question in the sense of they're  
19 not going to object that it's  
20 violating any confidentiality  
21 provision in the settlement  
22 agreement.

23 MR. SCHIAVONI: That's  
24 right, for purposes of today.